

**AKIN GUMP  
STRAUSS HAUER & FELD LLP**

Attorneys at Law

**R. LAURENCE MACON**  
210.281.7222/Fax: 210.224.2035  
lmacon@akingump.com

November 4, 2009

**VIA ECF AND OVERNIGHT DELIVERY**

The Honorable Claire C. Cecchi  
United States District Court  
District of New Jersey  
M.L. King, Jr. Federal Building and Courthouse  
50 Walnut Street  
Newark, New Jersey 07102

Re: In re Hypodermic Products Antitrust Litigation, Master Docket No. 05-CV-1602  
(JLL/CCC)

Dear Judge Cecchi:

We write to update the Court on the status of Rule 56(f) discovery, which, pursuant to the Court's October 8, 2009 Order, is scheduled to conclude by November 15, 2009, and to advise the Court that the MedStar Plaintiffs may need to move the Court for a short extension of the November 15 deadline because Becton and its Distributor Cardinal have not yet produced important information necessary to finishing discovery. We do not anticipate, however, that any adjustments to the discovery deadline would require any adjustment to the December 15, 2009 deadline for the parties to re-file their respective opening briefs on summary judgment.

**Discovery of Becton's Distributor Cardinal Healthcare, Inc.**

During the September 15, 2009 status conference with the Court, Your Honor permitted discovery of one of Becton's large distributors, Cardinal Healthcare, Inc. ("Cardinal"), and denied the MedStar Plaintiffs' request to take Rule 56(f) discovery of any of Becton's other large distributors. To date, despite repeated and ongoing promises by Cardinal to provide documents and deposition dates pursuant to the MedStar Plaintiffs' July 28, 2009 subpoena, Cardinal still has not furnished either.

As set forth in the email attached as Exhibit A, in Cardinal's most recent communication with us, Cardinal promised to supply deposition dates on or about Monday, November 2. As of today, they still have not provided dates, but we are optimistic that they will provide dates very promptly, and that discovery of Cardinal can be concluded by November 15, 2009. If discovery of Cardinal cannot be completed by then, however, the MedStar Plaintiffs will respectfully move the Court for a brief extension of the 56(f) discovery period, so that we can move to compel Cardinal's compliance in the district from which the MedStar Plaintiffs' subpoena was issued.

AKIN GUMP  
STRAUSS HAUER & FELD LLP  

---

Attorneys at Law

August 12, 2009

Page 2

Alternatively or additionally, the MedStar Plaintiffs may move the Court to strike any testimony or other submissions by Cardinal representatives submitted in support of the upcoming summary judgment briefing or motion for preliminary approval of settlement. We have been informed that Cardinal and its lawyers actively participated in the collusive \$45 million settlement that Becton and the Distributor Plaintiffs intend to present to the Court for preliminary approval.

**Discovery of Cardinal Healthcare, Inc.'s Accountant Ernst & Young LLP**

Related to the discovery the MedStar Plaintiffs seek of Cardinal is the discovery they seek of Cardinal's accountant, Ernst & Young LLP, upon which the MedStar Plaintiffs served a Rule 45 subpoena for documents and deposition testimony on July 29, 2009. If Cardinal can provide adequate testimony concerning the way in which it accounts for Becton's disposable hypodermic products it delivers to entities like the MedStar Plaintiffs that have direct contracts with Becton, the deposition of Ernst & Young as Cardinal's accountant may not be necessary. If, however, Cardinal is unable to adequately testify about its relevant accounting practices, the MedStar Plaintiffs will pursue the deposition of Ernst & Young LLP as Cardinal's accountant.

Depending on when Cardinal produces the information and deposition testimony it has been promising, it may be necessary for the MedStar Plaintiffs to move for a brief extension of the November 15 deadline to take the Ernst & Young deposition. Alternatively or additionally, the MedStar Plaintiffs may move to strike any accounting-related testimony or other submissions by Cardinal representatives that Becton or the Distributor Plaintiffs attempt to introduce in support of the upcoming summary judgment briefing or motion for preliminary approval of settlement.

**Discovery of Accounting Materials from Becton and Deposition of Becton's Accountant**

On September 14, 2009, the MedStar Plaintiffs took the Rule 56(f) deposition of Becton, and Becton's 30(b)(6) witness was unprepared to provide testimony about certain important accounting issues. We have been working constructively with Becton's counsel since the deposition to obtain information about the relevant accounting issues. Although it appears that Becton will furnish the requested accounting information before the November 15, 2009 deadline, it has become clear that there are certain questions related to Becton's accounting practices and relationships that can only be answered by its external accountant Ernst & Young LLP. It is unlikely that we will have sufficient time prior to November 15, 2009 to review and digest the accounting information being provided by Becton, in order to be prepared to take the deposition of Ernst & Young pursuant to a subpoena that has already been issued to it. Accordingly, we may need to move the Court to permit us to depose Ernst & Young some time shortly after Becton has produced the accounting information at issue.

AKIN GUMP  
STRAUSS HAUER & FELD LLP  

---

Attorneys at Law

August 12, 2009  
Page 3

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "R. Laurence Macon".

R. Laurence Macon

cc: All party counsel (via-email)  
Thomas Long, Esq. (counsel for Cardinal Healthcare, Inc.) (via email)  
Steven Weiser, Esq. (counsel for Ernst & Young LLP) (via email)

**AKIN GUMP  
STRAUSS HAUER & FELD LLP**  

---

Attorneys at Law

August 12, 2009  
Page 4

**EXHIBIT A**

---

**From:** Long, Thomas [mailto:TLong@bakerlaw.com]  
**Sent:** Friday, October 30, 2009 9:28 AM  
**To:** Lorenz, Delilah  
**Subject:** RE: MedStar v. Becton Dickinson- Cardinal Subpoena

Delilah

I am meeting with the accounting people on Monday. I have notified Cardinal of the deadlines. I should have dates for you following that meeting.

Tom

---

**From:** Lorenz, Delilah [mailto:dlorenz@AKINGUMP.com]  
**Sent:** Tue 10/27/2009 3:29 PM  
**To:** Long, Thomas  
**Cc:** Kracht, Torsten M.  
**Subject:** RE: MedStar v. Becton Dickinson- Cardinal Subpoena

Tom,

Please let us know available dates for the deposition and when we can expect production of the documents. As we have previously informed you, we have a November 15th discovery deadline.

Thank you,

Delilah S. Lorenz  
Akin Gump Strauss Hauer & Feld LLP  
300 Convent Street, Suite 1600